

**ZONING BOARD OF APPEALS**

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ZBA 2010-59
Petition of Jason & Anna Miller
5 Lawrence Road

Pursuant to due notice, the Special Permit Granting authority held a Public Hearing on Thursday, July 15, 2010 at 7:30 p.m. at the Town Hall, 525 Washington Street, Wellesley, on the petition of JASON & ANNA MILLER requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that demolition of an existing nonconforming house with less than required right side yard setbacks and demolition of an existing nonconforming garage with less than required right side yard and rear yard setbacks, and construction of a two-story house with less than required right side yard setbacks and construction of a storage shed with less than required right side yard and rear yard setbacks, on a 6,783 square foot lot in a district in which the minimum lot size is 10,000 square feet, at 5 LAWRENCE ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On June 28, 2010, the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Jason and Anna Miller (the "Petitioner"). Also present was Russell Busa, Sterling Homes.

Mr. Miller said that the proposal is to demolish the existing home and garage and build a two-story home and a shed.

The Board discussed demolition of the existing nonconforming garage. The Board said that the proposed shed will be within the setbacks but the side and rear setbacks will be improved. Mr. Miller said that the shed will be smaller than the existing garage. The Board asked if there were any other options for relocating the shed. Mr. Miller said that they would consider moving the shed.

The Board discussed the portion of the proposed house that will have a 16.1 foot side yard setback. The Board said that would be the only nonconforming part of the proposed house. Mr. Miller said that bumpout will mimic what is on the existing house. The Board said that the grandfathered nonconforming setbacks are lost when the house is demolished.

The Board asked about height calculations. Mr. Miller said that the height was measured from the existing grade. The Board said that the height is very close to the maximum allowed.

Stacy Miller, 21 Great Plain Avenue said that she is Jason's mother and is the owner of the house. She said that yards in this neighborhood are tiny. She said that moving the shed would break up the play

space for the children. She said that she thought that the proposed location of the shed is the best one. Mr. Miller said that is where all of the abutting neighbors have their sheds. The Board said that the shed could not be moved closer to the house because of limited space between them.

Ms. Anna Miller said that they spoke with the neighbors about the plans. She said that there were no objections.

Mr. Miller said that the shed will be finished with the same siding as the house. He said that the height of the shed will not be increased from the height of the existing garage. The Board said that the shed should not exceed 13 feet in height.

The Board said that the bumpout on the side of the proposed house should be removed from the plan. Mr. Miller said that will change the floor plan. He said that is the active entrance to the house because that is where the driveway is located. The Board said that there could be a side door with an overhang. The Board said that a side entrance would still function and would bring the proposed house into conformity. The Board said the purpose of the bylaw is to encourage conformity wherever possible.

The Board said that there is additional space to expand the house at the rear. Mr. Miller said that the side addition is one-story. He said that if they were to build off of the back, that would require building a two-story addition, which would be cost prohibitive.

Mr. Miller said that they struggled to come up with an open floor plan. The Board asked if the laundry room could be moved to the basement. Mr. Miller said that with new construction, laundry rooms are typically on the second floor. He said that, due to space constraints, they had to put it on the first floor. The Board said that is a matter of preference. The Board said that the Petitioner is asking the Board to grant something that is tantamount to granting a Variance, which has much higher standards for approval.

Stacy Miller said that the bumpout is small. She said that it will be a small house with three small children. She said that they need storage area. She said that the plan was to get the proposed building as compliant as possible. She said that they would not be imposing anything on the lot that wasn't already there.

The Board discussed what could be built in the side yard setback by-right. The Board said that it was asking for a small enough change to allow it to grant a Special Permit.

The Board concluded that the proposed shed is similar enough to the existing structure to grant a Special Permit. The Board said that it would restrict construction of the house to removal of the bumpout or conversion to a by-right open porch in the side yard setback.

August 19, 2010

The Board said that the hearing was reopened to correct an error of law.

Jason Miller said that they had originally requested a nonconforming dormer on the side of the proposed house. He said that they had also proposed to demolish the garage and construct a new shed. He said that the new plans are for a house that will meet all setback requirements. He said that the existing nonconforming garage will remain. He said that they will only re-side and touch up the garage to give it a similar look to the proposed house.

The Board asked about functionality of the proposed house without the initially proposed nonconforming piece. Mr. Miller said that they moved the laundry room into the basement. He said that they tried to put it on the second floor but it would be too crowded.

The Board said that the design of the proposed house is appropriate.

There was no one present at the Public Hearing who wished to speak to the petition.

Statement of Facts

The subject property is located at 5 Lawrence Road, on a 6,783 square foot lot in a district in which the minimum lot size is 10,000 square feet, with a minimum front yard setback of 24.6 feet, a minimum rear yard setback of 3.4 feet and a minimum right side yard setback of 4.2 feet.

The Petitioner is requesting a Special Permit/Finding that demolition of an existing nonconforming house with less than required right side yard and front yard setbacks and construction of a two-story house that will meet all setback requirements, on a 6,783 square foot lot in a district in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 6/15/10, revised 8/2/10, stamped by Susan E. Sullivan, Professional Land Surveyor, Proposed Floor Plans & Elevation Drawings, dated 6/16/10, revised to show a 25 square foot covered stair landing, prepared by Preferred Building Systems, and photographs were submitted.

On July 13, 2010, the Planning Board reviewed the petition and recommended that the Special Permit be denied.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing.

It is the opinion of this Authority that demolition of an existing nonconforming house with less than required right side yard and front yard setbacks and construction of a two-story house that will meet all setback requirements, on a 6,783 square foot lot in a district in which the minimum lot size is 10,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing

nonconforming structure, as it shall neither increase an existing nonconformity nor create a new nonconformity.

Therefore, a Special Permit is granted for demolition of an existing nonconforming house with less than required right side yard and front yard setbacks and construction of a two-story house that will meet all setback requirements, on a 6,783 square foot lot, in accordance with the submitted revised plot plan and construction drawings.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time-stamped on this decision.

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

Cynthia S. Hibbard, Acting Chairman

Robert W. Levy

David L. Grissino

cc: Planning Board
Inspector of Buildings
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